

# **AGREEMENT**

## **REGARDING PROPOSED ACTIVITIES SUBJECT TO CALIFORNIA FISH AND GAME CODE SECTIONS 1601/1603**

### **WHEREAS:**

1. Mr. Perry Coy, representing the California Department of Transportation (jointly referred to as "Caltrans") on September 23, 1998, notified ("Notification" #4-172-98) the Department of Fish and Game (Department) of the intent to divert or obstruct the natural flow of, or change the bed or banks of, or use materials from miscellaneous streams within the jurisdiction of the Caltrans Central Region, waters over which the Department asserts jurisdiction pursuant to Division 2, Chapter 6 of the California Fish and Game Code.
2. Caltrans may not commence any activity that is subject to Fish and Game Code Sections 1600 et seq. until the Department has found that such project will not substantially adversely affect an existing fish or wildlife resource or until the Department's proposals or the decisions of a panel of arbitrators, have been incorporated into such projects.
3. Fish and Game Code Sections 1600 et seq. make provisions for the negotiation of agreements regarding the delineation and definition of appropriate activities, project modifications and/or specific measures necessary to protect fish and wildlife resources.
4. The Department has determined that without the mitigative features identified in this Agreement, the activities proposed in the Notification could substantially adversely affect fish and wildlife.

### **NOW THEREFORE, IT IS AGREED THAT:**

1. The receipt of this document (Agreement) by Caltrans, satisfies the Department's requirement to notify Caltrans of the existence of an existing fish and wildlife resource that may be substantially adversely affected by the project that is described in the Notification.
2. The contents of this Agreement constitute the Department's proposals as to measures necessary to protect fish and wildlife, and satisfies the Department's requirement to submit these proposals to Caltrans.
3. The signature of a Caltrans representative on this Agreement constitutes Caltrans' commitment to incorporate the Department's proposals into the project that is described in the Notification.
4. If this Agreement is found to be in conflict with any other provision of law or general conditions of public safety, the conflict will be resolved before work under this Agreement may continue.

5. This Agreement does not constitute or imply the approval or endorsement of a project, or of specific project features, by the Department of Fish and Game, beyond the Department's limited scope of responsibility, established by Code Sections 1600 et seq. This Agreement does not therefore assure concurrence by the Department with the issuance of permits from this or any other agency. Independent review and recommendations will be provided by the Department as appropriate on those projects where local, state, or federal permits or environmental reports are required.

6. If the project could result in the "take" of a state listed rare, threatened or endangered species, then pursuant to Fish and Game Code Section 2090, Caltrans, as a State lead agency shall consult with the Department to ensure that projects will not jeopardize the continued existence of any listed species. If appropriate, contact Michael Mulligan at (559) 243-4017.

7. To the extent that the provisions of this Agreement provide for the diversion of water they are agreed to with the understanding that Caltrans possesses the legal right to so divert such water.

8. To the extent that the provisions of this Agreement provide for activities that require Caltrans to trespass on another owners property, they are agreed to with the understanding that Caltrans possesses the legal right to so trespass.

9. To the extent that the provisions of this Agreement provide for activities that are subject to the authority of other public agencies, said activities are agreed to with the understanding that all appropriate permits and authorizations will be obtained prior to commencing agreed activities.

10. All provisions of this Agreement remain in force throughout the term of the Agreement. Any provision of the Agreement may be amended at any time provided such amendment is agreed to in writing by both parties. Mutually approved amendments become part of the original Agreement and are subject to all previously negotiated provisions. The Agreement may be terminated by either party, subject to thirty (30) days written notification.

11. A copy of the Agreement will be provided to Caltrans' project supervisors and all contractors and subcontractors. Copies of the Agreement will be available at work sites during all periods of active work and will be presented to Department personnel upon demand.

12. Caltrans agrees to provide the Department access to the project site at any time, to ensure compliance with the terms, conditions, and provisions of this Agreement.

13. Caltrans, and any contractor, or subcontractor working on activities covered by this Agreement, are jointly and severally liable for compliance with the provisions of this Agreement. Any violation of the provisions of this Agreement is cause to stop all work immediately until the problem is reconciled. Failure to comply with the provisions and requirements of this Agreement may result in prosecution.

14. Caltrans assumes responsibility for the restoration of any fish and wildlife habitat which may be impaired or damaged either directly or, incidental to the project, as a result of failure to properly implement or complete the mitigative features of this Agreement, or from activities which were not included in Caltrans' Notification.

15. It is understood that the Department enters into this Agreement for purposes of establishing protective features for fish and wildlife, in the event that a project is implemented. The decision to proceed with the project is the sole responsibility of Caltrans, and is not required by this Agreement. It is agreed that all liability and/or incurred costs related to or arising out of the Caltrans project and the fish and wildlife protective conditions of this Agreement, remain the sole responsibility of Caltrans. Caltrans agrees to hold harmless and defend the Department of Fish and Game against any related claim made by any party or parties for personal injury or other damage.

16. The following provisions including any additional project features resulting from the above fifteen items, constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that Caltrans is precluded from doing other activities, at the site. However, activities not specifically agreed to and resolved by this Agreement are subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq..

## PROVISIONS

### General

1. Agreed work includes activities associated with the drilling of test bores at various State Highway crossings of streams, prior to the construction, replacement, or repair, of bridges. This Agreement only authorizes the test bore drilling activity and not the overlaying projects. The specific drill sites will be as indicated on submitted drawings. The scope of work (number, diameter/depth etc.) and the techniques to be used, will be as described in the documentation submitted for each new drill site.

2. The agreed activities within the stream may commence any time after the Department representative signs this Agreement. This agreement will be valid for a period of five years from the date of the Department representative's signature. Prior to each new instance where Caltrans intends to work under this agreement, the District Biologist will determine if the proposed drilling can be done within the provisions of this Agreement. A Memorandum stating the intended use of the Agreement, attached to the supporting documentation will be submitted to the Department for approval prior to commencing work.

3. Caltrans will notify the Department (call Michael Mulligan at 559/243-4017) upon the completion of the activities covered by this agreement.

### CEQA/CESA

4. The District Biologist will provide assurances in the above described Memorandum that all drilling activities subject to the provisions of this Agreement will be done such that the work will not cause significant impacts to fish and wildlife resources and that the work is categorically exempt from the review requirements of the California Environmental Quality Act (CEQA).

5. The District Biologist will provide assurances in the above described Memorandum that all drilling activities subject to the provisions of this Agreement will be done such that there will be no take of State or Federally listed rare, threatened or endangered species thus avoiding the California Endangered Species Act (CESA) requirements regarding consultation and permitting.

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2 Swallows

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4 6. Caltrans will avoid work on bridges when it would disturb nesting swallows (March 1 - September 1). If  
5 this condition cannot be met, the District Biologist will consult with the Department regarding alternative  
6 methods of avoiding the disturbance of swallows.

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8 Vehicles

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10 7. The drilling equipment will typically be operated from the bridge. Where the District Biologist concurs  
11 that this technique is not feasible, Caltrans may access dry portions of the stream bottom via existing access  
12 roads. Vehicles will not be driven or equipment operated in water covered portions of the stream, or where  
13 wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed. The District Biologist will  
14 discuss vehicle access for each project in the Memorandum.

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16 Vegetation

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18 8. No woody perennial vegetation will be removed or damaged. The disturbance or removal of other  
19 vegetation within the agreed work area will not exceed the minimum necessary to complete the agreed  
20 work. Precautions will be taken to avoid other damage to vegetation by people or equipment.

21  
22 Siltation

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24 9. Silty water will not be discharged into the stream, or created within the stream. Caltrans' ability to  
25 minimize siltation will be the subject of pre-construction consultation with the District Biologist, and if  
26 appropriate, by implementing protective features. Upon Department determination that siltation levels  
27 resulting from project related activities constitute a threat to aquatic life, activities associated with the  
28 siltation, will be halted until effective Department approved control devices are installed, or abatement  
29 procedures are initiated.

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31 Pollution

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33 10. Caltrans will not use drilling lubricants or additives that are toxic to aquatic life, in the drilling process.  
34 All lubricants and additives, and the core materials comprising the resulting drilling mud will be prevented  
35 from being discharged into the stream or placed where it could be washed into the stream.

36  
37 11. Caltrans and all contractors and subcontractors will be subject to the pollution protective and other  
38 features of Department of Transportation Standard Specifications Section 7-1.01G, and Fish and Game  
39 Code Section 5650 and 12015. In addition, all project generated debris, building materials and rubbish will  
40 be removed from the stream and from areas where such materials could be washed into the stream.

41  
42 12. Any equipment or vehicles driven and/operated adjacent to the stream will be checked and maintained  
43 daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.  
44 Staging/storage areas for equipment and materials will be located outside of the stream.

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Diversion

13. Any construction related water drafting or other water diversion, that is not specifically addressed in this agreement is subject to further conditions. If drafting or other diversion will occur, contact the Department to negotiate appropriate protective features.

Restoration

14. If the Department authorizes exceptions to certain of the above provisions, then minor alteration of the stream bed or banks could occur. The following are provisions to correct these potential impacts and will be implemented by Caltrans as appropriate.

15. Areas of disturbed soils with slopes toward the stream will be stabilized to reduce erosion potential. Restoration will include the re-vegetation of all disturbed soils. Where suitable vegetation cannot be reasonably expected to become established, non-erodible materials will be used for such stabilization. Any re-vegetation or installation of non-erodible materials will be coordinated with the District Biologist and the Department.

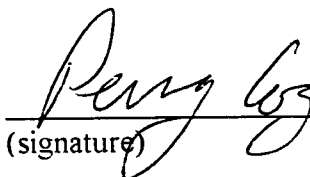
16. If the stream's low flow channel, bed or banks have been altered, these will be returned as nearly as possible to their original configuration and width, without creating future erosion problems.

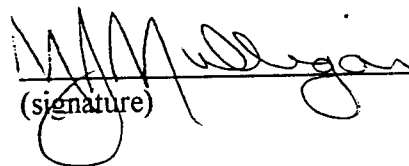
17. Caltrans will remove and re-contour any constructed access corridors to the stream bottom.

**CONCURRENCE**

California Department of Transportation

California Department of Fish and Game  
Region 4

 10-28-99  
(signature) (date)

 10/28/99  
(signature) (date)

